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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )  
 )  
BellSouth Personal )  
Communications, Inc. )  
Market 06B, Charlotte-Greensboro- )  
Raleigh MTA )  
Market 44B, Knoxville MTA )

PP Docket No. 93-253  
ET Docket No. 92-100

File No. 00010-CW-L-95  
File No. 00085-CW-L-95

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OPPOSITION TO PETITION TO DENY

BellSouth Personal Communications, Inc. ("BPCI") hereby opposes the "Petition to Deny and Request for Stay" filed by the National Association of Black Owned Broadcasters, Percy E. Sutton, and the National Association for the Advancement of Colored People (hereinafter collectively "NABOB") against *all* Form 600 applications submitted by winners of the Broadband PCS auctions, including BPCI's applications to provide Broadband PCS service on the B Blocks in the Charlotte-Greensboro-Greenville-Raleigh (Market 06) and Knoxville (Market 44) MTAs.

NABOB's petition should be dismissed without delay. Not only has NABOB failed to demonstrate its standing, its petition does not even allege a basis for objecting to BPCI's applications. NABOB has petitioned against BPCI's application even though its only substantive arguments (which are speculative and unsupported, at best) are directed against other auction winners. This constitutes an abuse of the Commission's processes.

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## II. NABOB LACKS STANDING

On May 12, 1995, NABOB filed a generic petition to deny *all* Form 600s submitted by high bidders in the A and B Block Broadband PCS auctions.<sup>1</sup> No allegations specific to a grant of BPCI's applications were raised.

Section 309(d)(1) of the Communications Act requires that a party seeking to deny an application establish standing as a "party in interest." 47 U.S.C. § 309(d)(1). A petitioner has standing only when it can "plead 'injury of fact' fairly traceable to the conduct complained of and likely to be redressed by the requested relief." *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 670 (D.C. Cir. 1987). NABOB fails to plead a specific injury that is likely to be remedied by denial of BPCI's applications.<sup>2</sup> It merely asserts its general "interest in the nation's rapidly evolving telecommunications policy" and the fact that it "has filed numerous pleadings in the Commission's proceedings establishing the PCS rules." Petition at 2. Nowhere in the

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<sup>1</sup> BPCI participated in the Block A and B auctions for the Charlotte-Greensboro-Greenville-Raleigh MTA (Market No. 06) and the Knoxville MTA (Market No. 44) and was the high bidder for the Block B licenses in both markets. BPCI timely submitted its down payment and Form 600 applications for these markets. On April 12, 1995, BPCI's applications appeared on public notice. See FCC Public Notice, Report No. CW-95-02 (Apr. 12, 1995).

<sup>2</sup> NABOB does not even assert that it was a bidder in the A and B Block auctions. It only makes a general assertion that it plans to bid in the C Block auctions.

petition does NABOB assert how it will be injured by grant of BPCI's applications.<sup>3</sup> Accordingly, NABOB lacks standing and its petition should be dismissed.

## II. NABOB'S PETITION TO DENY SHOULD BE DISMISSED AS DEFECTIVE

Not only does NABOB lack standing to file the subject petition, but its petition should be dismissed for failure to assert any basis for denying BPCI's applications. NABOB's only arguably substantive claim is a speculative argument that certain *other* auction participants may have acted anticompetitively.<sup>4</sup> It makes no claims regarding BPCI. Accordingly, the petition should be dismissed as defective.

Specifically, NABOB's petition fails to meet the requirements of Section 309(d) of the Communications Act. Pursuant to Section 309(d), all petitions to deny must:

- contain specific allegations of fact sufficient to show that . . . grant of the application would be prima facie inconsistent with [the public interest]; and

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<sup>3</sup> Although NABOB does claim that it may be irreparably harmed if a stay of the licensing process is not granted because it will be unable to access capital, acquire base station sites, access distributors and retailers, and will lose market share, these claims are both speculative and unrelated to denial of BPCI's application. BPCI has previously responded to NABOB's requests for stay and incorporates that filing by reference here. *See* BPCI's Opposition to Requests for Stay, PP Docket No. 93-253, ET Docket No. 92-100, filed May 19, 1995. Moreover, BPCI notes that Section 1.44(e) of the Commission's rules specifically requires that all stay requests be filed as separate pleadings. 47 C.F.R. § 1.44(e).

<sup>4</sup> NABOB alleges, without any evidentiary support, that many auction participants engaged in "an unlawful territorial allocation" by forming partnerships to ensure that the participants did not bid against one another. Petition at 11. It states that there were a number of "companies that appeared to be logical competitors for the PCS licenses: AT&T, McCaw Cellular, NYNEX, Bell Atlantic, U S West, Air Touch Communications, Sprint, TCI, Cox Communications, Comcast, MCI, Ameritech, BellSouth, GTE and Southwestern Bell." *Id.* It then implies that many of these companies attempted an unlawful territorial allocation by forming certain partnerships (*i.e.*, AT&T Wireless PCS, Inc., PCS Primeco, L.P., Wireless Co., L.P., and Phillie Co., L.P.). *Id.* BPCI is not even a member of any of these partnerships. In fact, it bid against them in the auction.

- contain affidavits supporting the specific allegations from person(s) with personal knowledge thereof;

47 U.S.C. § 309(d). In implementing this mandate, “the Commission canvasses the petition and supporting affidavits *for concrete factual assertions* which if proved in a subsequent hearing would alter the Commission’s public interest calculus.” *See Gencom v. FCC*, 832 F.2d 171, 180-81 (D.C. Cir. 1987); *United States v. FCC*, 652 F.2d 72, 88-90 (D.C. Cir. 1980) (*en banc*). Petitions that merely state “ultimate, conclusionary facts or more general allegations” are insufficient to support a petition to deny. *United States v. FCC*, 652 F.2d at 89; *Columbus Broadcasting Coalition v. FCC*, 505 F.2d 320, 323-24 (D.C. Cir. 1974). NABOB’s petition contains *no factual assertions* relating to any of the applications and it does not even contain an “ultimate, conclusionary fact[] or more general allegation[]” regarding BPCI. Thus, the petition fails to satisfy the threshold requirements of Section 309.

Given that NABOB stated no basis for the denial of BPCI’s application, it would appear that the only basis for including BPCI in NABOB’s petition to deny was to delay the A and B Block licensing process in the event its stay request is unsuccessful. The Commission has previously found that the filing of such a petition constitutes an abuse of process. *See Radio Carrollton*, 69 FCC 2d 1139, 1149-53 (subsequent history omitted); *Gill Industries*, 56 FCC 2d 765, 769 (1975).

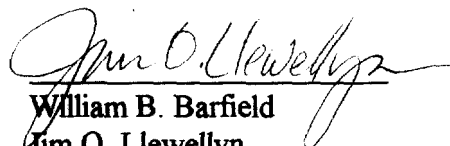
CONCLUSION

Based on the foregoing, BPCI respectfully requests that NABOB's petition to deny be dismissed.

Respectfully submitted,

**BELLSOUTH PERSONAL COMMUNICATIONS, INC.**

By:



William B. Barfield

Jim O. Llewellyn

1155 Peachtree Street, N.E.

Atlanta, Georgia 30309-3610

(404) 249-4445



Charles P. Featherstun

David G. Richards

1133 21st Street, N.W., Suite 900

Washington, D.C. 20036

*Their Attorneys*

May 25, 1995

## CERTIFICATE OF SERVICE

I, Donna Crichlow, a secretary in the law firm of Wilkinson, Barker, Knauer & Quinn, do hereby certify that a copy of the foregoing Opposition to Petition to Deny was served this 25th day of May, 1995 to the following by first class mail, postage prepaid:

\* Chairman Reed Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

\* Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

\* Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

\* Commissioner Rachelle Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

\* Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Jonathan D. Blake, Esq.  
Kurt A. Wimmer, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044

William J. Franklin, Esq.  
William J. Franklin, Chartered  
1919 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, D.C. 20006-3404

Philip L. Verveer  
Jennifer A. Donaldson  
Willkie Farr & Gallagher  
Three Lafayette Centre  
1155 - 21st Street, N.W., Suite 600  
Washington, D.C. 20036-3384

Kenneth R. Cole  
Vice President  
Century Telephone Enterprises, Inc.  
100 Century Park Drive  
Monroe, LA 71203

Ellen S. Deutsch  
Jacqueline R. Kinney  
Citizens Utilities Company  
Post Office Box 340  
8920 Emerald Park Drive, Suite C  
Elk Grove, CA 95759-0340

John A. Malloy, General Counsel  
Jill Foehrkolb, Director of Legal Affairs  
Columbia PCS  
201 N. Union Street, Suite 410  
Alexandria, VA 22314

Joe D. Edge, Esq.  
Mark F. Dever, Esq.  
Drinker, Biddle & Reath  
901 Fifteenth Street, N.W.  
Suite 900  
Washington, D.C. 20005

Stephen G. Kraskin, Esq.  
Sylvia Lesse, Esq.  
Charles D. Cosson, Esq.  
Kraskin & Associates  
2120 L Street, N.W., Suite 250  
Washington, D.C. 20037

Gail L. Polivy  
GTE Corporation  
1850 M Street, N.W., Suite 1200  
Washington, D.C. 20036

Thomas A. Karl  
President  
Karl Brothers, Inc.  
P.O. Box 53040  
Fairbanks, AK 99711

Thomas J. Casey, Esq.  
Jay L. Birnbaum, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111

Joseph A. Belisle, Esq.  
Karsten Amlie, Esq.  
Leibowitz and Associates, PEA  
One Southeast Third Avenue  
Suite 1450  
Miami, FL 33131

Cathleen A. Massey  
Senior Regulatory Counsel  
McCaw Cellular Communications  
1150 Connecticut Avenue,  
N.W. Fourth Floor  
Washington, D.C. 20036

W. Chris Blane  
President  
Metrex Communications Group, Inc.  
Five Concourse Parkway  
Suite 3100  
Atlanta, GA 30328

Benjamin H. Dickens, Jr., Esq.  
John A. Prendergast, Esq.  
Susan J. Bahr, Esq.  
Blooston, Mordkofsky, Jackson  
& Dickens  
2120 L Street, N.W.  
Washington, D.C. 20037

Henry Solomon, Esq.  
Amelia Brown, Esq.  
Haley, Bader & Potts  
4350 N. Fairfax Drive, Suite 900  
Arlington, VA 22203-1633

Mark J. Tauber, Esq.  
Mark J. O'Connor, Esq.  
Piper & Marbury  
1200 -19th Street, N.W.  
Seventh Floor  
Washington, D.C. 20036

James L. Wurtz  
Pacific Bell Mobile Services  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

David L. Nace, Esq.  
Marci E. Greenstein, Esq.  
Lukas, McGowan, Nace & Gutierrez,  
Chartered  
1111 - 19th Street, N.W., Suite 1200  
Washington, D.C. 20036

Patricia Diaz Dennis, Esq.  
Sullivan & Cromwell  
1701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Robert H. Kyle  
President, Kycom, Inc.  
96 Hillbrook Drive  
Portola Valley, CA 94028

Doris S. Freedman, Esq.  
Barry Pineles, Esq.  
Office of Advocacy  
United State Small Business  
Administration  
409 Third Street, S.W.  
Washington, D.C. 20554

Robert E. Levine, Esq.  
Latrice Kirkland, Esq.  
Mullin, Rhyne, Emmons  
& Topel, P.C.  
1225 Connecticut Avenue, N.W.  
Suite 300  
Washington, D.C. 20036

Paul C. Besozzi, Esq.  
Besozzi, Gavin & Craven  
1901 L Street, N.W.  
Suite 200  
Washington, D.C. 20036

Martin T. McCue, Esq.  
United State Telephone Association  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

George Y. Wheeler, Esq.  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036

Mark J. Golden, CAE  
Vice President, Industry Affairs  
Personal Communications Industry  
Association  
1019 - 19th Street, N.W.  
Suite 1100  
Washington, D.C. 20036-5105

Daniel C. Riker  
President & CEO  
DCR Communications, Inc.  
2550 M Street, N.W.  
Suite 200  
Washington, D.C. 20007

Encompass, Inc.  
Two Ravinia Drive, Suite 1205  
Atlanta, GA 30346

Thomas A. Hart, Jr., Esq.  
Michael Heningburg, Jr., Esq.  
McManimon & Scotland  
1275 Pennsylvania Avenue, N.W.  
Suite 500  
Washington, D.C. 20004



Curtis White  
Allied Communications Group, Inc.  
4201 Connecticut Avenue, N.W.  
Suite 402  
Washington, D.C. 20008-1158

William D. Jimerson  
Alliance Telecom, Inc.  
34 Woodbine Road  
Pittsford, NY 15534

Melodie A. Virtue  
American Women in Radio and  
Television, Inc.  
Haley, Bader & Potts  
4350 N. Fairfax Drive  
Suite 900  
Arlington, VA 22203-1633

Timothy E. Welch, Esq.  
Hill & Welch  
1330 New Hampshire Avenue, N.W.  
Suite 113  
Washington, D.C. 20036

Larry Irving  
National Telecommunications and  
Information Administration  
U.S. Department of Commerce  
14th & Constitution Avenue, N.W.  
Washington, D.C. 20230

National Association of Minority  
Telecommunications Executives  
and Companies  
One Thomas Circle, Suite 500  
Washington, D.C. 20005

Daryl L. Avery  
Public Service Commission of  
the District of Columbia  
450 Fifth Street, N.W.  
Washington, D.C. 20001

Peter J. Mitchell  
Minority Business Enterprise Legal  
Defense and Education Fund, Inc.  
220 Eye Street, N.W., Suite 280  
Washington, D.C. 20002

Veronica M. Ahern  
Nixon, Hargrave, Devans & Doyle  
One Thomas Circle, Suite 700  
Washington, D.C. 20005

Joseph Profit, Sr., Chairman  
Communications International  
Wireless Corporation  
NAMTEC  
521 Fifth Avenue, Suite 800  
New York, NY 10017

American Portable  
Telecommunications, Inc.  
Attn: Rudolph H. Hornacek  
30 North LaSalle Street  
Suite 400  
Chicago, IL 60602

Ameritech Wireless Communications,  
Inc.  
Attn: Evan B. Richards  
30 South Wacker Drive  
Chicago, IL 60606

AT&T Wireless PCS, Inc.  
Attn: Cathleen A. Massey  
1150 Connecticut Avenue, N.W.  
Fourth Floor  
Washington, D.C. 20036

Centennial Cellular Corporation  
c/o Richard Rubin  
Fleischman & Walsh, L.L.P.  
1400 - 16th Street, N.W.  
Suite 600  
Washington, D.C. 20036

Communications International  
Corporation  
Attn: Neil S. McKay  
717 West Sprague Avenue  
Suite 1600  
Spokane, WA 99204-0466

Cox Communications, Inc.  
Attn: Richard Kimsey  
1400 Lake Hearn Drive, N.E.  
Atlanta, GA 30319

GCI Communications Corporation  
Attn: Richard P. Dewling  
2550 Denali Street, Suite 1000  
Anchorage, AK 99503-2781

GTE Macro Communications  
Corporation  
Attn: Regulatory  
245 Perimeter Center Parkway  
Atlanta, GA 30346

Pacific Telesis Mobile Services  
Attn: Mike Patrick  
4420 Rosewood Drive  
Building 2, Fourth Floor  
Pleasanton, CA 94588

PCS PRIMECO, L.P.  
c/o AirTouch Communications, Inc.  
Attn: Kathleen Q. Abernathy  
1818 N Street, N.W., Suite 800  
Washington, D.C. 20036

PhillieCo., L.P.  
9221 Ward Parkway  
Kansas City, MO 64114

Poka Lambro Telephone  
Cooperative, Inc.  
11.5 Miles North of Tahoka, TX  
on U.S. 87  
P.O. box 1340  
Tahoka, TX 79373-7234

Powertel PCS Partners, L.P.  
421 Gilmer Avenue  
P.O. Box 657  
Lanett, AL 36863

South Seas Satellite Communications  
Corporation  
25 Stonington Road  
South Laguna, CA 92677

Southwestern Bell Mobile  
Systems, Inc.  
17330 Preston Road, Suite 100A  
Dallas, TX 75252

Western PCS Corporation  
Attn: John W. Stanton  
330 - 120th Avenue, N.E.  
Suite 200  
Bellevue, WA 98005

WirelessCo, L.P.  
9221 Ward Parkway  
Kansas City, MO 64114

James L. Winston, Esq.  
Rubin, Winston, Diercks,  
Harris & Cooke  
1333 New Hampshire Avenue, NW  
Suite 1000  
Washington, D.C. 20036

Wade J. Henderson  
Director, Washington Bureau  
National Association for the  
Advancement of Colored People  
1025 Vermont Avenue, N.W.  
Suite 1120  
Washington, D.C. 20005

Lois E. Wright, Esq.  
Vice President and Corporate Counsel  
Inner City Broadcasting  
Corporation  
Three Park Avenue, 40th Floor  
New York, NY 10014



Donna M. Crichlow

\*Hand-Delivered.